

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:)
) Case No. 3:19-bk-1971
CAPSTONE PEDIATRICS, PLLC,)
) Chapter 11
Debtor.)

OBJECTION TO ENTRY OF ORDER APPROVING AND AUTHORIZING SALE

Comes now CDS Business Services, Inc. d/b/a Newtek Business Credit (“CDS”) and files this its objection to the proposed sale of the assets to CareNation filed by Debtor [Doc.230].

As set forth in paragraphs 26-31 of the Sale Motion [Doc.207], the Debtor admits that CDS has a senior DIP Priming Lien secured by all post-petition assets of the Estate in an amount not less than \$1,509,442.78 and has sought application to include an additional \$677,496.99 to be added to that lien based on over-advances made at the request of Debtor prior to the increase in the DIP Facility limits. Moreover, CDS also holds the senior lien behind the DIP Lien, by virtue of its senior replacement adequate protection lien in all of Debtor’s assets to secure its pre-petition allowed claim of \$1,442,983.55. The most conservative estimation of the senior secured claim of CDS in the assets of Debtor is \$2,952,426.33, well in excess of the sale price of the proposed APA. Likewise, the recitals in the proposed asset purchase agreement acknowledge that CDS is the senior secured lender in all assets to be sold and that its debt will not be satisfied by said sale, and thus has the right to block any such sale.

As such, because the sale price does not exceed the total of the liens on the property to be sold, Debtor cannot sell the assets free and clear of CDS' consent, and CDS does not consent to release its liens based on the Asset Purchase Agreement on file with the court. [Doc. # 230-1] Likewise, Debtor has not articulated any other basis on which it could sell the assets pursuant to §363(f) and in fact there exists no such basis, absent CDS' consent..

CDS, the Debtor and the proposed purchaser continue to negotiate at this time, and CDS reserves its right to withdraw this objection based on an amended asset purchase agreement that may be filed with the court.

CONCLUSION

Therefore, CDS respectfully objects to the proposed sale on the term set forth in the Asset Purchase Agreement designated by Debtor.

Respectfully submitted,

/s/ Daniel H. Puryear

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on July 3 2020. Notice of this filing was sent by operation of the Court's electronic filing system to all those parties specifically requesting electronic service and as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. Additionally, notice of this filing was sent via email to:

America Cares Trust (ACT)
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/s/ Daniel H. Puryear _____
Daniel H. Puryear